

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1072 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

VALIMOHMAD MUSA MAKRANI

Versus

SUB DIVISIONAL MAGISTARATE

Appearance:

MS SUBHADRA G PATEL for Petitioner

NOTICE SERVED for Respondent No. 1

MS.SIDDHI TALATI, AGP. for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/12/98

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India the prayer is for issuance of writ of certioari quashing the show cause notice, Annexure "A" dated 6.2.1998, externment order dated 22.6.1998, Annexure "B" and the order of the Appellate Authority dated 30.9.1998, Annexure "C".

The brief facts are that a show cause notice under section 59 of the Bombay Police Act was given to the petitioner vide Annexure "A" and he was called upon to show cause why he should not be externed from

districts of Junagadh, Amreli, Probandar, Rajkot City and Rajkot Rural under section 56(B) of the Bombay Police Act. The petitioner submitted written statement and after considering the material on record the externing authority passed the impugned order, Annexure "B" on 22.6.1998. An appeal was preferred by the petitioner which was dismissed on 30.9.1998, Annexure "C". It is, therefore, this writ petition.

The learned Counsel for the petitioner has challenged the impugned orders on various grounds.

The first contention has been that there is delay in passing the impugned order which has rendered the impugned order of the externing authority illegal. I do not find force in this contention. Show cause notice was given on 6.2.1998 and the externment order was passed on 22.6.1998. There is mention in the order of the externing authority that till 18.5.1998 as many as 11 adjournments were given to the petitioner for defending his case. Thus, time upto 18.5.1998 during which proceedings could not be completed because the adjournments sought by the petitioner have to be excluded. After completion of proceedings the impugned order was passed on 22.6.1998. On this ground the impugned order cannot be quashed.

The next contention has been that the two offences registered against the petitioner came into existence on 10.3.1996 and 15.5.1996 respectively. Whereas the show cause notice was issued on 6.2.1998 and during this period of about two years no prejudicial activity or antisocial activity of the petitioner was highlighted and consequently in the absence of fresh material the impugned notice could not have been issued. This contention seems to have force. There was no recent activity prior to the issuance of the show cause notice which could be termed as prejudicial activity requiring the issuance of the show cause notice. The learned Assistant Government Pleader has admitted that during this interval no prejudicial activity against the petitioner was brought on record. Thus, on this ground, the order of the externing authority cannot be sustained and as such the order of the appellate authority confirming the order of the externing authority also fails.

Another contention has been that the notice was issued in a mechanical manner because the two offences are punishable under Chapter XVI of the IPC and not under Chapter XVII of the IPC. However, this contention is

without substance because in the show cause notice there is no mention that these offences were punishable either under Chapter XVI and Chapter XVII of IPC. On the other hand relevant sections of IPC and Bombay Police Act under which these offences were registered were disclosed in the show cause notice. The show cause notice is therefore not invalid on this ground. Mention was also made to the order of the externing authority that the offences are punishable under Chapters XVI & XVII of the IPC. However, this may be the result of mistake and clerical error. This Court in exercise of jurisdiction under Article 226 of the Constitution of India will not enter into exercise of hair splitting and finding fault with the order of the externing authority. Thus, this contention has no force.

It was next contended that statements of confidential witnesses are vague in nature and the date, time and area of operation of the petitioner was not disclosed by them, hence, the petitioner was prevented from presenting effective defence regarding alleged prejudicial activities. It may be mentioned that this argument can be viewed from another angle. In the show cause notice there is no mention that confidential witnesses gave any such statement. If this is so, then entire material against the petitioner was not disclosed in the show cause notice and the petitioner was thus prevented from submitting effective representation and defence. In the externment order there is mention that the externing authority has looked the statements of private witnesses who were treated as confidential witnesses. But even the gist of the statements of these witnesses was not shown in the impugned order nor such gist was indicated in the show cause notice. It was thus merely a subjective satisfaction of the externing authority. When he was passing externment order he was exercising quasi judicial functions and order of externment cannot be based on mere subjective satisfaction of the externing authority. Some objectivity is required to be exhibited in the externment order. It seems from the externment order that all of a sudden in this order statements of private witnesses were considered by the externing authority. The petitioner had no opportunity to offer his say regarding statements of these witnesses. Consequently, on this ground the impugned order of the appellate authority also becomes illegal.

There is mention in the order of the appellate authority as well as externing authority that preventive measures were taken against the petitioner but with no result. It is not disclosed by these two authorities

what preventive measures were taken by the authorities against the petitioner. Recital of preventive measures seems to be ornamental because admittedly, between 13.5.1996 to 6.2.1998 no fresh commission of offence against the petitioner was reported. Since extracts of statements of confidential witnesses were neither disclosed in the show cause notice nor in the externment order, it cannot be said for what period the statements of these two witnesses were related. As such, there was no occasion for taking preventive action against the petitioner and recital of taking preventive action in the orders of the authorities is ornamental.

To sum up therefore, it can be said that the impugned orders suffer from patent illegality for the reasons stated above. The writ petition therefore succeeds and is hereby allowed. The impugned orders at Annexures "B" & "C" dated 22.6.1998 and 30.9.1998 are hereby quashed.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt